HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.9927 of 2001

Between:

Md. Ismail …Petitioner

And

Deputy Commissioner of Prohibition
and Excise, Hyderabad and another. …
Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri K. Srinivasa Rao
for Sri M. Vishnuvardhan Reddy.

Counsel for the respondents : Assistant Government Pleader
For

8th August, 2007

In this petition filed under Article 226 of the Constitution, the petitioner has made the following substantive prayer:

> "It is, therefore, prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in rejecting the petition for interim custody in proceedings No.C4/891/2001 dt.2-3-2001 as illegal, arbitrary and violative of principles of natural justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

It is borne out from the record that while admitting the writ petition on 16th May, 2001, this Court passed the following interim order:

> "There shall be interim direction to the respondents to

release the vehicle bearing No.KA-01-A-3990 on condition of the petitioner furnishing bank guarantee for the value of the vehicle to be determined by the Motor Vehicle Inspector and also on giving an undertaking not to alienate the vehicle and produce the same as and when required by the authorities pending enquiry."

WVMP.No.2359 of 2001 filed by the respondents was disposed of on 18-9-2001. That order reads as under:

"The writ petition is directed against the order of the 1st respondent dated 2-3-2001 declining the release of the vehicle pending determination of the Excise case on the ground that the vehicle was intercepted while allegedly transporting 3,570 kg. of Chloral Hydrate which is known adulterant of toddy. This Court, while admitting the writ petition by order dated 16-5-2001, directed the release of the vehicle on condition of the petitioner furnishing a bank guarantee for the value of the vehicle to be determined by the Motor Vehicle Inspector and also on giving an undertaking not to alienate the vehicle and produce the same as and when require by the authorities pending enquiry. This application has been filed on 28-8-2001 seeking vacation of the interim order of this Court above. In the affidavit filed in support of this application, it is contended that a very large quantity of known adulterant of toddy 'Chloral Hydrate' was being found illegally transported, and that having regard to huge quantity of a well known poisonous substance being involved in the transport by the vehicle in question, there is no justification by this Court to interdict with the order of the 1st respondent declining to release the vehicle.

In view of the provision of Article 226(3) of the Constitution, the interim order granted by this Court on 16-5-2001 is deemed to have abated two weeks after notice to the respondent – writ petitioner of this application, filed on 28-8-2001. Even otherwise, the discretion inhering in law does not ensure for granting of interim orders as the validity of the order of the 1st respondent rejecting the writ petitioner's application for release is subject matter of the writ petition itself and without adjudication on the validity of such an order, interlocutory order which has effect of allowing the main writ petition itself ought not to have been granted in particular circumstances as those present in this case. This application is accordingly allowed. The order dated 16-5-2001 is deemed to have abated on the application of Article 226(3) of the Constitution."

On the last date of hearing, i.e. 1-8-2007, the Court took cognizance of the statement made by the learned Assistant Government Pleader that after 16-5-2001, the petitioner did not come forward to take the vehicle. Thereupon, he was directed to seek information from the concerned authorities and make a statement about the present status of the vehicle and the criminal case registered against the petitioner.

Today, Assistant Government Pleader produced letter No.C4/891/01, dated 4-8-2007 sent to his office by Deputy Commissioner of Prohibition and Excise, Ranga Reddy Division. That letter reads as under:

> "I invite your attention to the reference cited. I am to state that the SHO, Sherilingampally has reported vide reference 2nd cited, that the vehicle seized in COR No.710/01-02, dated 4-2-2001, Lorry bearing No.KA-01-3990, is kept in the Rajendranagar Proh. & Excise Station premises from the beginning (The photographs of the lorry are enclosed).
>
> He further reported that regarding the crime case, he reported that case is charge sheeted and numbered as C.C.No.242/07 and the case posted to 18-1-2008 for appearing of the accused in lower court."

In view of the above developments, the writ petition is dismissed leaving the petitioner free to file an application in the Court before which C.C.No.242 of 2007 is pending.

G.S. SINGHVI, C.J.

8th August, 2007.

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